



Nebraska Resources

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Resources Related Legislation Adopted During the 1999 Legislative Session

By Jim Cook

Except for some changes in the statutes relating to the location and operation of livestock waste control facilities, 1999 was not a year for major resources legislation. Three bills are summarized below. Also, since 1999 was the first year of a two year biennium, bills not passed or indefinitely postponed this year will be carried over until next year. There are a number of significant resources related bills pending for consideration when the legislature reconvenes in January.

Summary of bills passed:

LB 92: Reduce Registration Fee for Linked Irrigation Wells/ Fund WWDF



LB 92 has two purposes: (1) to reduce the registration fees for multiple wells which are linked together to operate a single irrigation system; and **(2) to provide a source of dedicated funding for the Water Well Decommissioning Fund.** The first purpose is accomplished by providing that when more than two wells are linked together for a single irrigation system, the registration fee is paid only on the first two of those wells; the others are registered without any additional fee. The second purpose is accomplished by dedicating to the Water Well Decommissioning Fund (WWDF) the **\$30 fee** paid for registration of water wells. Those registration fees have previously gone to the state General Fund. Exactly how much will be available each year for the WWDF will depend upon the number of wells registered up to a maximum amount established by the Legislature. For fiscal years 99-00 and 00-01 that appropriation "cap" is \$178,840. In FY 99-00, there is also an additional \$20,000 available for the WWDF.

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NRDF Project Dedications

By Tom Pesek

Two completed Nebraska Resources Development Fund projects were formally dedicated by the sponsors this June. On June 16th the Papio-Missouri River NRD dedicated the **Papio Site 21 Project** near Papillion. The project consists of a 100-acre reservoir on a 485-acre tract with extensive recreation facility development around the reservoir. The site was originally identified by the Corps of Engineers in its flood prevention plan for the Papillion Creek Watershed. The NRD has named the project the "Walnut Creek Lake and Recreation Area" and opened it to the public in March. The Commission provided a NRDF grant of \$4,264,485.41 for this project.

The City of Pender held its dedication of the **Pender Flood Control Project** on June 26th. This project was planned, designed, and principally funded by the Corps of Engineers as a Section 205 Project. It consists of levees, a concrete floodwall, two highway closures, and a detention basin and will protect Pender from the 385-year flood event on Logan Creek. A NRDF grant of \$913,293 was awarded to this NRDF Project.

Flood Mitigation Planning Update

By Steve McMaster

With the recent ten-inch record rainfall over the Omaha area, once again communities are faced with addressing their flood problems. As was not the case after the big floods of 1993, this time interested communities may qualify for some federal flood planning assistance grants through the Flood Mitigation Assistance (FMA) program.

Started in earnest in late 1997, the NNRC has implemented the FMA program and has watched the popularity of flood mitigation planning grow throughout 1999 - and promises to keep doing so in 2000. The goal of the FMA program is to reduce claims on the National Flood Insurance Program (NFIP) through the development of flood mitigation plans for communities which have experienced flood damage or which are generally interested in reducing their flood vulnerabilities.

The NNRC is very heavily involved with the U.S. Army Corps of Engineers' Lower Platte Feasibility Study, which seeks to reduce flood damages in the stretch from Columbus to the Plattsmouth. As part of the nonstructural portion of the Study, funding has been set aside for flood mitigation planning for interested communities. In response to

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DIRECTOR'S COMMENTS

When you hear of a ten and one half-inch rain in less than a 24-hour period, you expect to learn about heavy flood losses. Eppley Airfield in Omaha received such a rain on August 6-7, 1999 and the damage was extensive in the immediate area. Fortunately, the heavy rain was not widespread over the entire metro area and the flood control structures in place aided in preventing even further damage. The Papio-Missouri River Natural Resources District reported this was the heaviest and most widespread rainfall event in the Papio Creek Watershed since 1965, but much has been done since that time to reduce the impact of such a storm. In addition, a floodwarning system consisting of 22 gages has been established in the Papio Watershed to aid in an early warning system.

Further north, Tekamah was also spared from heavy flood damage because of a Public Law 566 watershed in place. As NRCS State Conservationist noted, "The heavy rain that fell above Tekamah left the town's 1800 residents very appreciative of the PL-566 dams in place above the town." Summit Lake, a combination flood control and recreation structure that normally holds 195 acres of water swelled to 250 acres of water as potential flood waters came within 12 inches of flowing through the emergency spillway on the dam.

While the damage done by this storm was significant, it could have been much worse without the careful thought and planning over the years to make sure flood damages can be reduced. And with this storm, comes a reminder that owners of properties that are susceptible to flooding should strongly consider purchasing flood insurance. The National Flood Insurance Program should be regarded as an ultimate replacement for payments of federal disaster assistance to owners or residents of flood-damaged structures. Flood insurance is a vital element toward reducing the dependence upon as well as the expectation of payments through Federal Disaster relief programs.

Congressman Doug Bereuter has an interesting proposal before the House of Representatives entitled, "Two Floods and You Are Out of the Taxpayers' Pocket Act of 1999." If such legislation is enacted, it will certainly encourage people to assure protection for their property and recognize that they can not always depend on federal disaster relief. Forethought is important when it comes to natural disasters.



(Flood Mitigation Con't)

a letter of interest sent out to all communities and counties in the Study area, five communities and two counties have expressed interest. From July 6-15, a series of four public meetings was held in order to receive community input and to educate the public on the various aspects of the Feasibility Study. Held respectively at Mahoney State Park, Chalco Hills, North Bend, and Valley, it was widely held that these public meetings served their purpose very well.

In addition to the Lower Platte Feasibility Study, the NNRC is receiving other federal funds through FEMA's Hazard Mitigation Grant Program as a result of the ice storm disaster of October, 1997. These funds require a 25% non-federal match which is being provided through the Community Development Block Grant (CDBG) program, as administered by the Nebraska Department of Economic Development. These funds will be used to complete a mitigation plan for the Village of DeWitt, which is entirely located within the floodplains of the Big Blue River and Turkey Creek. This flood mitigation planning effort in DeWitt comes at a time when American Tool, DeWitt's largest employer, has been awarded a business expansion grant through the CDBG program. The FEMA money can be used to supplement the budget of communities and counties in the Lower Platte Feasibility Study or in other communities outside of the Study area.

The NNRC continues to receive annual FMA program allotments for planning and project grants. In FY97 the

planning and project funds were used in the City of Beatrice to acquire flood-prone properties in the Big Blue floodplain. Beatrice used to have 12 repetitive loss properties, but due to FMA and HMGP acquisitions, only two remain. FY98 planning and project funds were used in the City of Superior, which sought solutions to flooding on Lost Creek. The City is currently seeking matching funds for FMA project money which will be used for bank stabilization along Lost Creek. Much of the FY99 project funds are being used to acquire additional residences in the Big Blue floodplain in Beatrice. The planning grant funds have not been obligated yet, but may be used in communities such as the villages of Crete or Rulo, or to supplement the budget of the Lower Platte Feasibility Study.

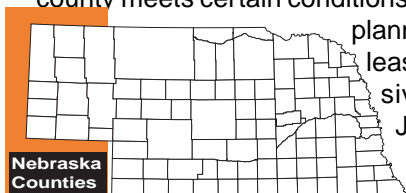
Finally, the NNRC has additional CDBG funds which is to be used for flood mitigation planning. Although currently very much in the planning phase, these funds may be used to supply the necessary 50% match for Corps of Engineers Section 202 planning funds. These funds may be used anywhere in the State, but may once again fit best within the framework already started in the Lower Platte Feasibility Study.

Based on the explosive growth of interest and available funds, flood mitigation planning continues to gain popularity. Since many of the flood problems in Nebraska exist because of poor planning in the past, flood mitigation planning is an idea whose time has come.

(Legislative Summary Con't)

LB 822: **Temporary Zoning Regulations/Confined Animal Feeding Operations in Cold Water Class A Stream Watersheds**

LB 822 has two primary purposes, both of which are related to the location and operation of confined animal feeding operations. The bill permits counties which do not presently have a comprehensive development plan to adopt temporary zoning regulations if the county meets certain conditions. It must have appointed a



planning commission and be at least preparing a comprehensive development plan by January 1, 2000. Also, the interim zoning regulations which can be adopted

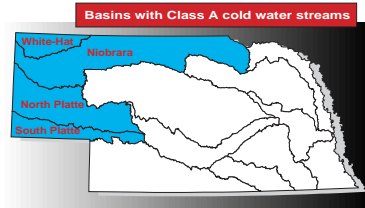
must be in use in one of the five geographically closest zoned counties. A county board could adopt an entire set of zoning regulations from one of those counties or could select portions from two or more of those counties. However, interim zoning regulations cannot implement a moratorium on livestock waste control facilities or impact any land use which is existing and lawful at the time the temporary zoning is adopted.

The temporary zoning regulations could include setback requirements for livestock operations or livestock facilities. Those required setbacks could be no more than $\frac{1}{2}$ mile from the nearest occupied residence and no more than 1 mile from an incorporated city or village or a concentration of 10 or more residences within $\frac{1}{4}$ square mile.

Temporary zoning regulations adopted pursuant to LB 822 will expire on July 1, 2001.

The other major purpose of LB 822 is to prevent the location of any new Class II, Class III, or Class IV livestock waste control facilities in any part of a watershed that feeds directly or indirectly into a cold water Class A stream. Certain exceptions are permitted by the Act. Existing livestock operations which do not currently have a waste control facility but are later determined to need one would be allowed to construct such a facility. New livestock waste control facilities and expansions for such facilities could still be built if an application had been received and deemed complete by DEQ prior to January 1, 1999.

All current cold water Class A streams are in the Niobrara, North Platte, South Platte, and White River-Hat Creek Basins. DEQ could revise the list of cold water Class A streams in the future, however, it could not designate a new stream as a cold water Class A stream unless the stream had supported the reproduction of a salmonoid (trout) population within the previous five years.



LB 822 was passed with the emergency clause and became effective on May 24.

LB 870: **Amendments to Livestock Waste Control Facility Statutes/Permits for Wells Under 50 gpm**

Section 1 of LB 870 modifies the well permit section of the Groundwater Management and Protection

Act to allow some natural resources districts to require permits for water wells designed and constructed to pump 50 gpm or less if the well is not required for human needs as it relates to health, fire control and sanitation and is not used to water range livestock. Only those NRDs which have groundwater management areas and have adopted regulations to control declining groundwater levels may require permits for those smaller capacity wells.



The remainder of LB 870 consists of amendments to the Livestock Waste Management Act passed in 1998 (LB 1209). Since the passage of that bill, there has been uncertainty about what portions of a livestock operation could be constructed before the Department of Environmental Quality's (DEQ) permit for the waste control facility was granted. LB 870 answers that question by providing that "construct" means the initiation of physical onsite activities specific to the livestock waste control facility. It does not include use of the site for borrow material for other construction purposes or the construction of other components of the livestock operation.

The bill exempts livestock operations with fewer than 300 animal units from the permitting requirements and from the need for an inspection unless those operations have had a confirmed discharge into waters of the state or DEQ has determined that because of conditions at the livestock operation there is a high potential for a discharge into wa-

Continued on page 4

(Legislative Summary Con't)

ters of the state. Also, existing livestock waste control facilities will not be granted a permit if they are located within 100 feet of a water well if that well is under separate ownership and water from the well is used primarily for human consumption.

Existing livestock operations which are not exempt from the Act and have not requested an inspection prior to January 1, 2000, shall be subject to a late fee of not less \$50 and no more than \$500 for each month thereafter until the inspection is requested.

Livestock waste control facility permits are valid as long as the livestock operation continues to operate and waste control facilities meeting the requirements of the Act may continue to operate as long as those requirements continue to be met.

The 1998 legislation, LB 1209, did not have a specific time frame for DEQ to provide NRDs with copies of waste control facility permit applications. Under the changes made by LB 870, the NRD is to be notified within five days after DEQ's receipt of the application. Also to be notified in the same time frame is the county board of the county in which the facility is to be located. For Class II, III, or IV facilities, the Department also is required to publish notice of receipt of the application in a daily or weekly newspaper or other publication with general circulation in the area of the proposed facility. Any interested person may submit written comments on that application within thirty days after the publication of the notice.

DEQ now has ninety days after receipt of a complete permit application to make its decision. Engineering evaluations or assessments may be required for an existing livestock waste control facility if after an inspection:

- (a) *"The Department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or*
- (b) *The Department has reason to believe that an existing livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts."*

New Class I livestock waste control facilities are exempt from the Engineers and Architects Regulation Act.

Lastly, when LB 1209 was passed in 1998, it provided that DEQ developed best management practices for control of odor were to terminate on July 1, 1999. LB 870 repealed that termination date, leaving those regulations in place at least for now.

Passed with the emergency clause, LB 870 took effect on May 26.

Related Interim Study Resolutions

Listed below are brief descriptions of related interim study resolutions. The content of any of these interim study resolutions can be viewed by clicking on the resolution number in the final legislation memo for the year on our website (<http://www.nrc.state.ne.us>).



- LR 92** - Interim study to examine policy choices concerning changes in the method of allocating state lottery revenue. Referred to General Affairs.
- LR 102** - Interim study to examine giving natural resources districts authority to establish floodplain management corridors and authority to deny certain water well applications. Referred Natural Resources.
- LR 106** - Interim study on the issue of designating certain streams or rivers as state protected rivers. Referred to Natural Resources.
- LR 107** - Interim study relating to the concept of water banking or water leasing. Referred to Natural Resources.
- LR 108** - Interim study to examine merging several agencies into a single Department of Natural Resources. Referred to Natural Resources.
- LR 123** - Interim study of the uses and purposes of Nebraska Environmental Trust Fund distributions. Rereferred from Natural Resources to a joint study between Natural Resources and General Affairs.
- LR 151** - Interim study to review all ground water and surface water quality monitoring programs. Referred to Natural Resources.
- LR 224** - Interim study of the commercial fertilizer fee. Referred to Natural Resources.
- LR 233** - Interim study to examine the statutory authority and operations of the Planning and Review Process program of the Natural Resources Commission. Referred to Natural Resources/Appropriations.

Nebraska Resources Development Fund Projects

Obligated Funds For FY 2000

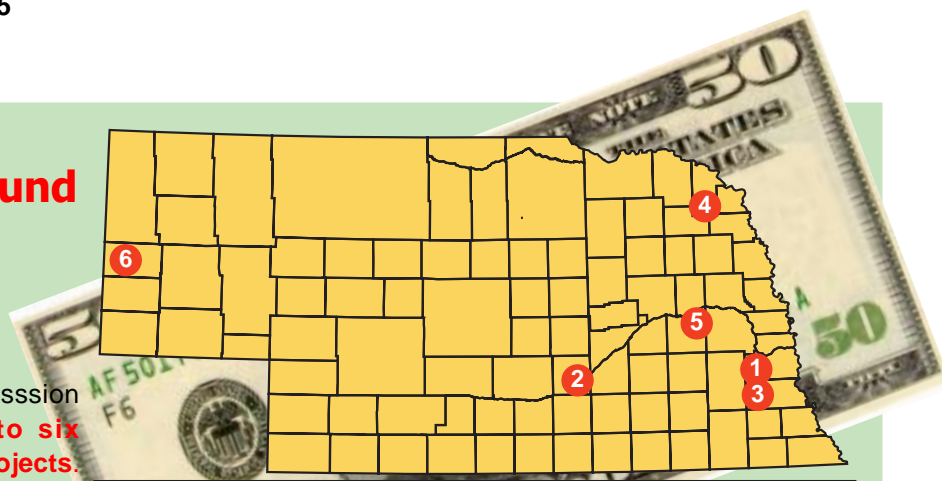
By Tom Pesek

At its June 17, 1999, meeting, the Commission obligated a total of **\$2,768,741.38** to **six Nebraska Resources Development Fund projects**. Three of the projects are new starts as they received their first obligation of state funds.

The **Weeping Water Creek Watershed Project**, sponsored by the Lower Platte South NRD, received \$590,499 for the acquisition of land rights at Site 7g, the last and largest of 19 flood-water retarding structures (dams) to be constructed in the flood damage reduction project. The Central Platte NRD will utilize the obligation of \$1,403,225 for land rights acquisition and bridge construction in the **Lower Wood River/Upper Warm Slough Project**, a flood reduction project on the south side of Grand Island. The Nemaha NRD received an obligation of \$256,912.38 for the **Upper Little Nemaha Watershed Project** which consists of 18 floodwater retarding structures. The NRD will utilize the funds for additional design work and the construction of four more dams.

The **Wakefield Levee Project** received its first obligation of funds (\$138,900) for feasibility study, final design, and partial land rights acquisition costs. The City of Wakefield is sponsoring this flood damage reduction project.

The **Skull Creek Site 55 Project** was awarded an obligation of \$181,488. The Lower Platte North NRD will utilize these funds to initiate design and land right acquisition work on this flood damage reduction and recreation project near Bruno. The City of Gering is sponsoring the **Gering Canal Phase III Project** which was obligated \$197,717. These funds will be used to design and construct this project that will reduce flooding in the western part of the city by preventing overflow of the Gering Canal.



NRDF Obligated Funds

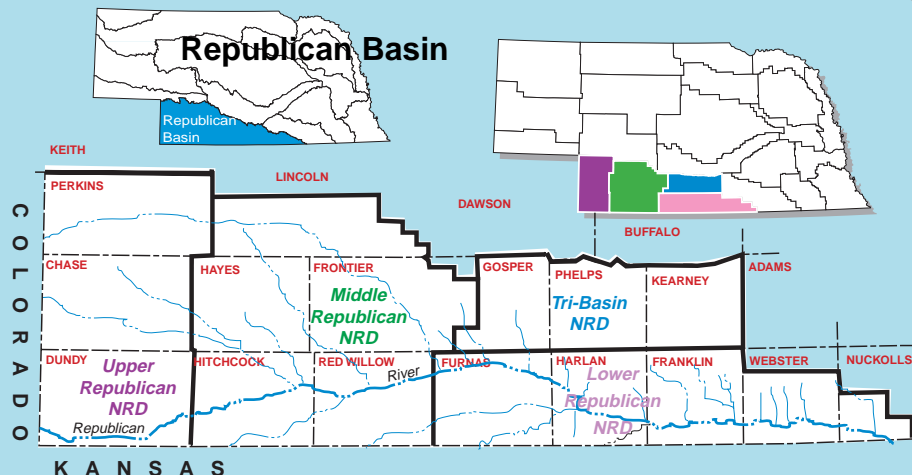
Project	Sponsor	FY 2000 Obligation	Total NRDF Obligated Funds to Date
1 Weeping Water Ck. Wtsh.	Lower Platte South NRD	\$590,499	\$5,204,450
2 Lower Wood River/Warm Slough	Central Platte NRD	\$1,403,225	\$4,377,070
3 Upper Little Nemaha Wtsh.	Nemaha NRD	\$256,912	\$3,955,455
4 Wakefield	City of Wakefield	\$138,900	\$317,432
5 Skull Creek Site 55	Lower Platte North	\$181,488	\$494,943
6 Gering Canal (Phase 3 only)	City of Gering	\$197,717	\$197,717

Republican River Alluvial Wells

By Gayle Starr

The Republican Basin alluvium water well meter program is now well underway and good progress is being made in the installation of meters by landowners. The operation of the meters will allow a more accurate determination of the amount of ground water being withdrawn in the alluvial area and help determine the effect that ground water withdrawals might be having on streamflows.

The Department of Water Resources originally determined that a total of 2,676 wells were in the alluvial area of the Republican River. That total is continually changing as new wells are installed, corrections are made and the alluvial boundary is more accurately defined. **As of August 20, 1999 a total of 571 well meters have been installed and provided cost-share assistance through the Natural Resources Commission's supplemental appropriation to the Soil and Water Conservation Fund.** An additional 384 wells were determined to already have adequate meters in place or are being measured by other means. That leaves approximately eighteen hundred wells yet to be metered. The vast majority of the unmetered wells are in the Middle Republican and Lower Republican NRDs





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of Nebraska's soil and water resources.*

NEBRASKA RESOURCES SUMMER, 1999/p.6

Come Visit the
Natural Resources Commission
in the **Natural Resources Tent** At
Husker Harvest Days
September 14, 15 and 16



Other groups represented at the tent include:

Nebraska Department of Water Resources
Nebraska Health and Human Services
Nebraska Department of Environmental Quality
Nebraska Game and Parks Commission
USDA Natural Resources Conservation Service
US Environmental Protection Agency
Bureau of Reclamation
Central Nebraska Public Power and Irrigation District
Nebraska Public Power
Nebraska Natural Resources Districts
Nebraska Association of Resources Districts

STATE OF NEBRASKA
Mike Johanns, Governor



**NEBRASKA
NATURAL RESOURCES COMMISSION**
Dayle E. Williamson, Director
301 Centennial Mall South
P.O. Box 94876
Lincoln, Nebraska 68509-4876
<http://www.nrc.state.ne.us>

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